

CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 06-11

AN ORDINANCE AMENDING AND RENUMBERING TIGARD MUNICIPAL CODE CHAPTER 5.14 AND TITLE 15 TO INCORPORATE A RIGHT-OF-WAY USAGE FEE AND CLARIFY FRANCHISE AND RIGHT-OF-WAY USE REQUIREMENTS FOR ALL UTILITIES

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WHEREAS, the City has the obligation to manage its rights-of-way for the benefit and protection of its residents; and

WHEREAS, the City and most utilities that use the City rights-of-way have entered into franchise agreements that regulate use of the rights-of-way and require the payment of franchise fees as compensation for use of the rights-of-way; and

WHEREAS, the "Telecommunications Franchise Ordinance" in Chapter 5.14 of the Code sets out the franchise and right-of-way use requirements for telecommunications carriers; and

WHEREAS, recently several telecommunications carriers have refused to enter into new franchise agreements; and

WHEREAS, it is important to have specific language in the Code to clarify the City's existing authority to receive compensation for use of the rights-of-way in the absence of a current, valid franchise agreement;

WHEREAS, Chapter 15.04, "Work in the Right-of-Way," references a franchise requirement for other utilities using the rights-of-way, but does not specify the franchise and right-of-way use requirements; and

WHEREAS, the City desires to adopt consistent standards and regulations for use of the rights-of-way and to place these standards and regulations in the appropriate Title and Chapter in the Code.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapters 5.14 and Title 15 of the Tigard Municipal Code are amended and renumbered as shown in Attachment A to this Ordinance. (Strike-through text is deleted from the Code; underlined text is added to the Code.)

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED:

By majority vote of all Council members present after being read by  
number and title only, this 8<sup>th</sup> day of August, 2006.

Catherine Wheatley  
Catherine Wheatley, City Recorder

APPROVED:

By Tigard City Council this 8<sup>th</sup> day of August, 2006.

C. A. Dirksen  
Craig Dirksen, Mayor

Approved as to form:

Kay Fehstone  
City Attorney

8/08/06  
Date

to Ord 06.11

ATTACHMENT A

TIGARD MUNICIPAL CODE

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## GENERAL TERMS & CONDITIONS

### ~~5.14.01~~5.06.010 Short Title.

This ~~Chapter~~ shall be known and referred to as the Tigard Telecommunication Franchised Utility Ordinance.

### ~~5.14.02~~5.06.020 Definitions.

1. Emergency. As used in this chapter, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

2. Franchise. As used in this chapter, "franchise" means the privilege conferred on a person ~~or entity~~ by the City to place and operate portions of a ~~telecommunications utility~~ system in, over or under ~~rights rights-of-of-way~~. Franchises shall be conferred by ordinance ~~or resolution~~ and confirmed by a franchise agreement.

3. Gross Revenues. As used in this chapter, "gross revenues" means revenues earned within the City, less net uncollectibles, from the sale of electrical energy, gas, telecommunications, water, or sanitary sewage disposal and treatment service, and for the use, rental, or lease of utility facilities of the utility engaged in such business.

Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks.

To the extent that the City's authority to tax gross revenues of an entity is limited by ORS 221.410 through 221.655, the City shall apply the statutory limitations to the definition of "gross revenues."

4. Person. As used in this chapter, "person" means every natural person, firm, co-

partnership, association, corporation or entity, but not including special districts or county service districts.

35. Right-Right-of-of-way. As used in this chapter, "~~right-right-of-of-way~~" includes City streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the City. "Right-Right-of-of-way" also includes public utility easements to the extent that the easement allows use by the franchisee utility operator planning to use or using the public utility easement. "~~Right-Right-of-of-way~~" includes the subsurface under and airspace over these areas. "Right-of-way" does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.

6. Sidewalk. As used in this chapter, "sidewalk" means an area specifically delineated and constructed for pedestrian use located behind a curb but within the rights-of-way or within an easement specifically established for that purpose.

7. Street or Alley. As used in this chapter, "street" or "alley" means every way or place open as a matter of right to the use of the public for vehicular or pedestrian traffic between right-of-way lines.

4. Competitive telecommunications service provider. As used in this chapter, "competitive telecommunications service provider" means an operator of a telecommunications system that does not have exclusive rights to provide service to a geographic area under state or federal law.

58. Telecommunications facility. As used in this chapter, "telecommunications facility" means any physical component of a telecommunications system located within or attached to the rights-of-way.

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19. Telecommunications system. As used in this chapter, "telecommunications system" means a system of fibers, lines, cables, antennas, microwave links, or other conduit and supporting structures and equipment constructed or used for the purpose of transmitting audio, video, digital or other forms of electric or electronic signals or information. "Telecommunications system" does not include a cable communications system. However, if a portion of a cable communications system is also used for telecommunications other than cable communications, the system is both a cable communications system and a telecommunications system. Telecommunications system does not include a system used for the transmission of electric power solely for power purposes, even if a portion of the system is used to communicate information about the power system for use by the system operator. Telecommunications system does not include mobile telecommunications equipment (e.g. cellular phones, hand-held or vehicle-mounted radios) but does include fixed antennas and other fixed equipment used to convey signals to or from mobile telecommunications equipment.

10. Utility facility. As used in this chapter, "utility facility" means any physical component of a utility system located within or attached to the rights-of-way.

11. Utility operator. As used in this chapter, "utility operator" means any person that places or maintains any portion of a utility system within the rights-of-way.

12. Utility system. As used in this chapter, "utility system" means a system owned and operated by a person to deliver or transmit electricity, natural gas, telecommunications, water, sewer, storm sewer or other goods or services by means of pipes, wires, transmitters, or other facilities permanently located within or attached to the rights-of-way to or from customers within the corporate boundaries of the City of

Tigard. "Utility system" also includes transmission of these products or services through the City of Tigard whether or not customers within the City are served by those transmissions. "Utility system" does not include any agency of the federal government.

### ~~5.14.030~~15.06.030 Purpose.

The purpose and intent of this ordinance chapter is to:

1. ~~Comply with the provisions of the 1996 Telecommunications Act as they apply to local governments, telecommunications carriers and the service those carriers offer;~~

2. ~~Promote competition on a competitively neutral basis in the provision of telecommunications services;~~

3. ~~Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to business institutions and residents of the City;~~

4. ~~Permit and manage reasonable access to the public-rights-of-way of the City for telecommunications utility purposes on a competitively neutral basis and conserve the limited physical capacity of those public-rights-of-way held in trust by the City;~~

52. ~~Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public-rights-of-way are fully compensated by the persons seeking such access and causing such costs;~~

63. ~~Secure fair and reasonable compensation to the City and its residents for permitting private use of the public-rights-of-way;~~

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4. Comply with the provisions of the Communications Act of 1934 as they apply to local governments.

## **15.06.040 Jurisdiction.**

The requirements of this chapter shall apply to all rights-of-way under the jurisdiction of the City of Tigard, dedicated by plat or deed, created by user, or the use thereof controlled by the City pursuant to agreements with Washington County or the Oregon Department of Transportation.

## **5.14.040~~15.06.050~~ Franchise Required.**

No person shall place or maintain any portion of a telecommunications system within a right of way without a franchise. The City may grant a franchise allowing use of any right of way for any portion of a telecommunications system, consistent with the regulations established in or under the authority of this chapter.

1. Any person that places or maintains a utility system in any portion of the right-of-way without a franchise is subject to all other provisions of this chapter, including the payment of the right-of-way usage fee pursuant to section 15.06.100.

2. The City may grant a franchise allowing use of any right-of-way for any portion of a utility system.

3. To the extent the terms of a franchise are inconsistent with the provisions of this chapter, the terms of the franchise shall prevail.

## **5.14.050~~15.06.060~~ Grant of Franchise.**

1. To competitive telecommunications service providers. The City Council may shall grant by resolution a telecommunications-utility franchise to any person providing competitive telecommunications-utility services whoich has

submitted an application, meets the requirements of this ~~Chapter~~chapter, and agrees to sign the City's standard franchise agreement without modification. The franchise shall not be effective until the applicant signs the City's standard ~~Telecommunications-Utility~~ Franchise Agreement substantially in the form approved by the City Council. The City Council shall approve the form of the standard ~~Telecommunications-Utility~~ Franchise Agreement by resolution.

2. ~~To others.~~ The City Council may grant telecommunications-utility franchises in any other circumstance by ordinance. Any franchise ordinance shall not be effective until a franchise agreement is entered into by the City and the franchisee.

3. Nonexclusivity. All telecommunications-utility franchises granted to competitive telecommunications service providers shall be nonexclusive.

## **5.14.060~~15.06.070~~ Privilege Granted.**

The franchise shall grant a privilege to use ~~rights-rights-of-of-way~~ consistent with the requirements of this chapter. The franchise does not convey any right, title or interest in the ~~right right-of-of-way~~.

## **5.14.070~~15.06.080~~ Term.**

Unless otherwise specified in the franchise agreement and resolution or ordinance, franchises shall be in effect for ten years but in no case shall exceed 15 years.

## **5.14.080~~15.06.090~~ Franchise Fee.**

1. Any person applying for a franchise (including an application for renewal) shall pay an application fee to cover the cost of processing the application. The City Council shall establish the fee by resolution.

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2. ~~The annual fee included in the franchise agreement shall be the amount or amounts contained in the Master Fee Resolution in effect at the time the franchise agreement is adopted.~~

~~—Gross revenue generated within the City includes monthly service charges paid by customers within the City, the full amount of charges for separately charged transmissions originating and received within the City, half the amount of separately charged transmissions that either originate or are received within the City but are received or originate outside the City, any amounts received for rental of facilities within the right-of-way, and any other amounts received by the franchisee for services (including resale services) provided by the franchisee that use facilities within the right-of-way.~~

~~In the event that a transmission is sent or received by a mobile device (e.g. cellular phone), the mobile device shall be deemed to be in the jurisdiction where the bills for use of the device are sent, regardless of actual location at the time of the transmission.~~

3. The franchise agreement may provide for payment of a franchise fee as compensation for use of rights rights-of-of-way and reimbursement of the City's cost of administering the program created in this chapter. The franchise fee is separate and distinct from any other legally authorized federal, state or local taxes or fees, except to the extent that payment of a franchise fee shall count as a credit to the right-of-way usage fee.

43. The fees imposed by this chapter are not subject to the property tax limitations of Article XI, sections 11(b) and 11(19) of the Oregon Constitution and are not fees imposed on property or property owners by fact of ownership and are not new or increased fees for purposes of those subsections.

54. The franchise fee shall be payable semi-annually on or before March 15 for the six month period ended December 31, and September 15 for the six month period ended June 30, unless otherwise stated in the resolution authorizing the franchise. The franchisee shall pay interest at the rate of one-nine percent per month-year for any payment made after the due date. (Ord. 02-05).

### 15.06.100 Right-of-Way Usage Fee.

1. All persons using a utility system or facility in the right-of-way to provide service to customers within the City of Tigard shall annually pay a right-of-way usage fee calculated as a percentage of gross revenues, subject to any applicable limitations imposed by federal and state statutes, including the privilege tax limitations set forth in ORS 221.410 through 221.655.

2. The right-of-way usage fee percentage applicable to each class of utility shall be as follows:

Telecommunications:	5.0%
Electric:	3.5%
Natural Gas:	5.0%
Water:	5.0%
Sanitary Sewer	5.0%

3. Right-of-way usage fee payments shall be net of any franchise fee payments received by the City, but in no case will be less than \$0.

4. Unless otherwise agreed to by the City, the right-of-way usage fee shall be payable semi-annually on or before March 15 for the six month period ended December 31, and September 15 for the six month period ended June 30. The utility shall pay interest at the rate of nine percent per year for any payment made after the due date.

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## ~~5.14.090~~15.06.110 Application Standards For Joint Telecommunications/Cable Franchises.

Persons or entities providing cable television and telecommunications services over the same network under a franchise negotiated, approved and recommended by the Metropolitan Area Communications Commission (MACC) and ratified by the City Council will be presumed to have met the application requirements for a telecommunications franchise issued by the City. The telecommunications franchise and MACC franchise will be of equal term and the franchisee can rely on the insurance certificates and surety bonds pursuant to the MACC franchise. This provision does not exempt MACC franchisees from the requirements to submit an application, obtain a franchise, pay the franchise fee, and otherwise comply with the requirements of this Chapter~~chapter~~.

### APPLICATION & RENEWAL PROCESS

## ~~5.14.100~~15.06.120 Application.

Any person seeking a franchise shall submit to the City Manager a letter of application presenting the following for a franchise shall include:

1. ~~A completed City application form. The City Manager shall prescribe the form to be used.~~

2. ~~Information identifying the applicant and describing the telecommunications utility system the applicant proposes to operate in the rights of wayrights-of-way. The initial application shall include engineering plans, specifications and a network map showing the anticipated location and route of proposed telecommunications facilities in the right of wayright-of-way, including both existing and proposed facilities. If any of the facilities are owned by others, that information should be provided.~~

32. Information establishing that the applicant has obtained or is in the process of obtaining all other required governmental approvals to construct and operate the system and to offer or provide the telecommunications services proposed, including, if applicable, any PUC filings or approvals.

43. The application fee.

~~5. Information showing that applicant has the financial, technical and legal capacity to provide the services and comply with the requirements of this chapter. That information shall include a summary of the franchisee's business history.~~

~~6. A business plan showing the intention and ability to provide services for which the franchise is required. The franchisee may request that the business plan be kept confidential.~~

## ~~5.14.110~~15.06.130 Denials.

Any denial of a franchise application shall be in writing and state the reasons for the denial. The City may deny an application for a franchise:

1. If the ~~franchisee~~applicant has not complied with all application requirements and standards; or

2. ~~If the franchisee lacks sufficient financial, technical or legal capacity to provide services and assure compliance with applicable standards;~~

3. ~~If the franchisee~~applicant has a record of non-compliance;

4. ~~If other factors demonstrate that the grant of a privilege to use rights of way is not in the public interest of the City and its citizens.~~



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## ~~5.14.120~~15.06.140 Renewal.

A franchisee that desires to renew a franchise shall submit a letter n application for requesting renewal including the information set forth in section 15.04.120 on a form prescribed by to the City Manager no less than 180 days before expiration of the franchise.

### OBLIGATIONS OF FRANCHISEE

## ~~5.14.200~~15.06.150 Assignment Or Transfer Of Franchise.

A franchise may not be transferred or assigned to another person unless such person is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal or state laws to approve such transfer or assignment. The franchisee shall provide the City with without the express written consent of the City. notice of any transfer or assignment within 20 days of requesting approval from any state or federal agency. — A transfer of ownership or control of a majority interest in the franchisee shall constitute transfer of the franchise.

2. If a franchise is assigned or transferred, the assignee or transferee shall become responsible for all facilities of the existing transferee at the time of transfer. The City shall allow the transfer or assignment if a transfer fee in an amount determined by resolution has been paid, the transferee or assignee meets all requirements imposed on franchisees, and the transferee or assignee agrees in writing to be bound by the franchise agreement and all applicable regulations. — A transfer or assignment of a franchise does not extend the term of the franchise.

## ~~5.14.210~~15.06.160 Leased Capacity.

A ~~franchisee~~ utility operator may lease capacity ~~or bandwidth on or in~~ its systems to others, provided that the ~~franchisee~~ utility operator provides the City with the name and business address of any lessee. All persons leasing capacity ~~or bandwidth on a telecommunication or in a utility system and providing telecommunications services to others using that capacity or bandwidth are subject to the provisions of this chapter required to obtain a telecommunications franchise.~~

## ~~5.14.220~~15.06.170 Duty To Provide Information, Audit Responsibility.

Within ~~10-30~~ business days of a written request from the City, a franchisee utility operator shall furnish the City:

1. Information sufficient to demonstrate that ~~franchisee the utility operator~~ is in compliance with this ~~ordinance chapter and or~~ its franchise agreement;

2. Access to all books, records, maps, and other documents, maintained by the ~~franchisee~~ utility operator with respect to its facilities in ~~rights of way rights-of-way~~ so that the City may perform an audit. Access shall be provided within the Portland Oregon metropolitan area unless prior arrangement for access elsewhere has been made with the City.

3. If the City's audit of the books, records and other documents maintained by ~~franchisee the~~ utility operator demonstrate that the ~~franchisee~~ utility operator has underpaid the franchise fee or right-of-way usage fee by five percent or more in any one year, ~~franchisee the utility operator~~ shall reimburse the City for the cost of the audit and shall pay interest as specified in ~~Ssections~~ 5.14.080 15.06.090 and 15.06.100 from the original due date.

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## 5.14.230 Service To The City.

~~If the City contracts for use of telecommunications facilities, services, installation or maintenance from the franchisee, the franchisee shall charge the City franchisee's most favorable rate offered at the time of the request to similar users within Oregon for a similar volume of service, subject to state law. With the City's permission, the franchisee may deduct any applicable charges from franchise fee payments. Other terms and conditions of services provided by franchisee to the City may be specified in a separate agreement.~~

## 5.14.24015.06.180 Insurance.

~~All franchisees utility operators shall secure and maintain in full force and effect public commercial general liability insurance covering bodily injury and property damage on an "occurrence" form (1996 ISO or equivalent) acceptable to the City. Such insurance shall cover all risks arising directly or indirectly out of the utility operator's activities or work under this chapter, including all subcontractors to any tier. The policy or policies of insurance maintained by the utility operator shall provide at least a general aggregate limit of \$5 million with a per occurrence limit, with a 30-day cancellation clause, with a combined single limit of \$3 million, insuring the franchisee utility operator and naming the City as an additional insured with respect to this chapter on the policy. The utility operator franchisee shall cause a certificate of insurance to be provided to the City Recorder. The insurance shall indemnify and hold the City harmless against liability or damage which may arise or occur from any claim resulting from franchisee's operations under this agreement and shall provide for a defense of the City against such claims.~~

As an alternative, a utility operator franchisee may provide and keep in force self-insurance in an

equal amount to the insurance required to be obtained from a third-party insurer. The franchisee shall indemnify, defend and hold harmless the City through its self-insurance program against any and all claims, actions, demands and suits (including attorney fees and costs) arising out of or resulting from the franchisee's activities. The utility operator franchisee shall provide proof of self-insurance acceptable to the City if it chooses to self-insure.

The procuring of required insurance or self-insurance shall not be construed to limit utility operator's liability. Notwithstanding said insurance or self-insurance, the utility operator shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this chapter.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. A 30 days notice of cancellation provision shall be physically endorsed on the policy.

The utility operator's coverage shall be primary to the extent permitted by law and insurance maintained by the City is excess and not contributory insurance as to the insurance required by this chapter.

## 5.14.25015.06.190 Indemnification.

Each utility operator franchisee shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including reasonable attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by

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~~any person or entity in any way, arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator grantee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance chapter or by a franchise agreement. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.~~

### **5.14.260 — Damage To Grantee's Facilities.**

~~The City shall not be liable for any damage to or loss of any telecommunications facility as a result or in connection with any work by or for the City or for any consequential damages or losses resulting from such work unless the damage or loss is the direct and proximate result of willful, intentionally tortious, or malicious acts by the City.~~

### **5.14.270 — Performance Surety.**

~~Each franchisee must provide a performance bond acceptable to the City as security for the full and complete performance of any franchise granted under this Ordinance, to cover any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the franchisee to comply with the codes, ordinances, rules, regulations or permits of the City. The bond shall be in amount sufficient to pay for the removal of all of franchisee's facilities within the right of way.~~

### **5.14.28015.06.220 Location Of Facilities.**

All facilities located within the ~~public right of way~~right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement.

1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a ~~public right of way~~right-of-way of the City, the City may require a ~~franchisee utility operator~~ with permission to occupy the same ~~public right of way~~right-of-way to locate its ~~telecommunications facilities~~ underground.

2. Whenever all new or existing electric utilities, cable facilities and telecommunications facilities are located or relocated underground within a ~~public right of way~~right-of-way of the City, the City may require a ~~franchisee utility operator~~ that currently occupies the same ~~public right of way~~right-of-way to relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the ~~public right of way~~right-of-way.

### **5.14.29015.06.230 Interference With Rights Of WayRights-of-Way.**

No ~~franchisee utility operator~~ may locate or maintain its ~~utility telecommunications facilities~~ so as to unreasonably interfere with the use of the ~~public rights of way~~rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the ~~public rights of way~~rights-of-way. All use of ~~public rights of way~~rights-of-way shall be consistent with City codes, ordinances and regulations. No ~~franchisee~~ shall engage in work in a right of way during any moratorium on right of way work, except as permitted by the City in case of an emergency.

## **CONSTRUCTION ISSUES**

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### **5.14.30015.06.200 Construction Permits.**

~~Except in the event of an emergency, No~~ no person shall construct or install any ~~telecommunications-utility~~ facilities within a ~~right~~ ~~right-of-of-way~~ without first obtaining a construction permit, ~~and paying the~~ ~~construction/street opening fee established~~ pursuant to ~~Section chapter~~ 5.14.32015.04. ~~No permit shall be issued for the construction or installation of telecommunications facilities within a right of way unless the telecommunications carrier has obtained a franchise. Construction permits may be applied for at the same time a franchise is applied for.~~

In the event of an emergency, a utility operator may conduct work in the rights-of-way after providing notice to the City. The utility operator shall apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work, and shall furnish any required maps and materials within 30 days of commencing work.

### **5.14.31015.06.210 Facilities.**

All ~~telecommunications-utility~~ facilities in the ~~right-right-of-of-way~~ shall be constructed, installed, operated and maintained in accordance with all applicable federal, state, and local statutes, codes, ordinances, rules and regulations. All facilities shall comply with applicable design standards imposed by regulation or construction permit. No facility may be placed on any City facility without the express written consent of the City. The City may require separate payment for rental of space on City facilities. For purpose of this section, a ~~right-right-of-of-way~~, street or sidewalk is not a facility, but structures, including poles, conduit, boxes, and equipment, are facilities.

### **5.14.32015.04.040 Permit Applications.**

1. Applications for construction permits shall be submitted on forms provided by the City and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:

a. That all work will be performed and any the facilities will be constructed in accordance with all applicable codes, rules and regulations;

b. That all work will be performed and any the facilities will be constructed by or for a franchisee in accordance with the franchise agreement;

c. The location and route of all of applicant's new facilities to be installed as well as all of applicant's existing facilities in the construction area, including a cross-section to show the facilities in relation to the street, curb, sidewalk and ~~right-right-of-of-way~~;

d. The construction methods to be employed for protection of existing structures, fixtures and facilities and a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.

2. Applications for construction permits shall be accompanied by the following:

a. A verification that the drawings, plans and specifications submitted with the application comply with all applicable technical codes, rules and regulations. The City may require that the verification be by a registered professional engineer.

b. A written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the City Engineer.

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c. The ~~construction/street opening~~ permit fee in an amount to be determined by resolution of the City Council. The fee shall be designed to defray the costs of City administration of the construction permit program.

### ~~5.14.330~~15.04.050 Review By City Engineer.

The City Engineer, after reviewing the materials submitted with the application, shall notify the ~~franchisee-applicant~~ if changes in the construction plans are needed and what City requirements must be met. ~~If any work otherwise normally requiring a construction permit is conducted in response to an emergency, the franchisee shall furnish the required maps and materials within 30 days of commencing work.~~

### ~~5.14.340~~15.04.060 Permit Issuance.

Upon a determination that the application and supporting information complies with the requirements of this chapter, the City Engineer shall issue a permit authorizing construction ~~of in the facilities~~ rights-of-way, subject to conditions that the City Engineer deems appropriate to ensure compliance with this chapter ~~and to protect the public health, safety, welfare and interest.~~ In order to minimize disruption to transportation and to coordinate work to be performed in the ~~right~~ right-of-way, the permit may specify a time period within which all work must be performed and require coordination of construction activities. The City Engineer may impose conditions regulating the location and appearance of facilities.

### ~~5.14.350~~15.04.070 Compliance With Permit.

All construction shall be in accordance with the permit and approved plans and specifications. The City Engineer or designee shall be provided access to the work site and the opportunity to inspect any work in the ~~right-right-of-way~~. The permittee shall provide, upon request, any

information needed by the City Engineer or designee to determine compliance with applicable requirements. All work that does not comply with all requirements shall either be corrected or removed at the sole expense of the permittee. The City is authorized to issue stop work orders to assure compliance with this ~~Chapter~~.

### ~~5.14.360~~15.04.080 Notice Of Construction.

Except in an emergency, the permittee shall notify the City Engineer not less than two working days prior to any excavation or construction in the ~~right-right-of-way~~.

### ~~5.14.370~~15.04.090 Construction In ~~Right-Right-Of-Of-Way~~.

The ~~franchisee-permittee~~ shall complete all construction within the ~~right-right-of-way~~ so as to minimize disruption of the ~~right-right-of-way~~ and utility service and without interfering with other public and private property within the rights-of-way. All construction work within ~~rights-of-way~~, including restoration, must be completed within 120 days of issuance of the construction permit unless an extension or alternate schedule has been approved by the City Engineer. The ~~franchisee-permittee~~ shall comply with City traffic control procedures and standards.

### ~~5.14.380~~15.06.240 As Built Drawings.

~~Franchisee-~~The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its ~~telecommunications-utility~~ facilities within ~~rights-of-wayrights-of-way~~ after initial construction of its system and, to the extent available, shall provide the City two updated complete sets of as-built plans annually, upon request by the City.

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### **5.14.39015.04.120 Restoration Of Public Rights Rights-of-w-Way And City Property.**

1. When a ~~franchisee, or any person acting on its behalf,~~ permittee does any work in or affecting any ~~public rights~~ rights-of-of-way or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or designee.

2. If weather or other conditions do not permit the complete restoration required by this section, the ~~franchisee~~ permittee shall temporarily restore the affected ~~rights-of-of-way~~ or property. Such temporary restoration shall be at the ~~franchisee's~~ permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

3. If the ~~franchisee~~ permittee fails to restore ~~rights~~ rights-of-of-way or property to good order and condition, the City shall give the ~~franchisee~~ permittee written notice and provide the ~~franchisee~~ permittee a reasonable period of time not exceeding thirty (30) days to restore the ~~rights~~ rights-of-of-way or property. If, after said notice, the ~~franchisee~~ permittee fails to restore the ~~rights~~ rights-of-of-way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

4. A ~~franchisee or other person acting in its behalf~~ permittee shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or

damage to any person, vehicle or property by reason of such work in or affecting such ~~rights~~ rights-of-of-way or property.

5. ~~Franchisee~~ The permittee shall restore all streets, alleys, roads and other public ways or places that it disturbs to the same condition the area was in prior to ~~franchisee's~~ permittee's work. ~~Franchisee~~ The permittee shall perform all work in compliance with applicable rules, regulations, ordinances or orders. The City Engineer may issue orders to ensure compliance with this Ordinance chapter and proper protection of public and private property. If the ~~franchisee~~ permittee fails to make repairs or provide restoration in response to any order within the time allowed under the order, City may make those repairs at the expense of the ~~franchisee~~ permittee.

### **5.14.40015.04.140 Performance And Completion-BondFinancial Security.**

When the City, in its sole discretion, determines that a permittee's work or manner of performance warrants, the permittee Prior to installing new telecommunications facilities in any right-of-way, the franchisee shall provide a performance bond or other surety financial security in a form acceptable to the City in an amount equal to at least 110% of the estimated costs of constructions in of the new facilities within the rights rights-of-of-way. The surety financial security shall remain in force until 60 days after substantial completion, including restoration of public rights-of-way and other property, as determined by the City. The surety financial security shall guaranty timely completion, construction in compliance with applicable plans, permits, codes and standards, proper location, restoration of public rights rights-of-of-way and other property, and timely payment and satisfaction of all claims, demands or liens for labor, material or services.

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### **5.14.41015.06.250 Coordination Of Construction.**

All ~~franchisees~~utility operators shall make a good faith effort to coordinate their construction schedules with those of the City and other users of the ~~rights-of-way~~rights-of-way.

1. Prior to January 1 of each year, the ~~franchisee~~utility operators shall provide the City with a schedule of known construction work for that year in the City's ~~rights-of-way~~rights-of-way or that may affect the ~~rights-of-way~~rights-of-way.

2. ~~Franchisee agrees to~~Utility operators shall meet with the City at least once each calendar year, at the request of the City, to schedule and coordinate work in ~~rights-of-way~~rights-of-way. The City shall share information on plans for other construction projects within ~~rights-of-way~~rights-of-way.

3. All construction projects within ~~rights-of-way~~rights-of-way shall be coordinated as ordered by the City Engineer or designee, to minimize public inconvenience, disruption, or damages.

### **5.14.42015.06.260 Relocation Or Removal Of Facilities.**

The ~~franchisee~~utility operator shall temporarily or permanently remove, relocate, change or alter the position of any ~~telecommunications~~utility facility within a ~~public right-of-way~~right-of-way when requested to do so in writing by the City. The removal, relocation, change or alteration shall be at the ~~franchisee's~~utility operator's expense when the removal, relocation, change or alteration is needed because of construction, repair, maintenance, or installation of public improvements or other operations of the City within the ~~right-of-way~~right-of-way or is otherwise in the public interest. In the event that the removal, relocation,

change or alteration is needed to accommodate private development or other private use of the ~~right-of-way~~right-of-way, the developer or other private party requiring the action shall be responsible for the cost of removal, relocation, change or alteration. The utility operator franchisee shall be under no obligation to remove, relocate, change or alter its facilities to benefit a private party unless and until the private party pays a deposit for costs to the utility operator franchisee. The City shall specify in the written notice the amount of time for removal, relocation, change or alteration. In the event of emergency, the utility operator franchisee shall take action as needed to resolve the emergency, and the City may use any form of communication to direct the utility operator franchisee to take actions in an emergency to protect the public safety, health and welfare.

### **5.14.43015.06.270 Plan For Discontinuance Or Removal.**

Whenever a utility operator franchisee plans to discontinue any ~~telecommunications~~utility facility, the utility operator franchisee shall submit a plan for discontinuance to the City. The plan may provide for removal of discontinued facilities or for abandonment in place. The City Engineer shall review the plan and issue an order to the utility operator franchisee specifying which facilities are to be removed and which may be abandoned in place. The order shall establish a schedule for removal. The utility operator franchisee shall remain responsible for all facilities until they are removed.

### **5.14.44015.06.280 Removal Of Abandoned Facilities.**

Unless otherwise agreed to in writing by the City Engineer, ~~Within~~within 30 days following written notice from the City, a utility operator franchisee and any other person that owns, controls, or maintains any unauthorized

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~~telecommunications—utility~~ system or facility within a ~~right-of-way~~right-of-way shall, at its own expense, remove the ~~system or facilities—facility~~ and restore the ~~right-of-way~~right-of-way. A ~~telecommunications—utility~~ system or facility that the City Engineer has approved to be abandoned in place is not an unauthorized ~~telecommunications—utility~~ facility. A ~~telecommunications—utility~~ system or facility is unauthorized under the following circumstances:

1. The ~~telecommunications—utility~~ system or facility is outside the scope of authority granted by an existing franchise. This includes systems or facilities that were never franchised and systems or facilities that were once franchised but for which the franchise has expired or been terminated, unless the utility operator pays the right-of-way usage fee and complies with the provisions of this chapter. This does not include any facility for which the City Engineer has authorized abandonment in place.;

2. The system or facility has been abandoned and the City Engineer has not authorized abandonment in place. A system or facility is abandoned if it is not in use and is not planned for further use. A system or facility will be presumed abandoned if it is not used for a period of one year. A ~~franchisee—utility~~ operator may overcome this presumption by presenting plans for future use of the system or facility, or that demonstrate—demonstrating that the utility operator is capable of using the system or facility in the futureplanned use within a reasonable period.

3. The facility is improperly constructed or installed or is in a location not permitted by the franchise or this ~~Ordinance~~chapter.

### **5.14.45015.06.290 Removal By City.**

If the ~~franchisee or former franchisee~~utility operator fails to remove any facility when

required to do so under this ~~Ordinance~~chapter, the City may remove the facility and the ~~franchisee or former~~utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement.

### **15.06.300 Appeals.**

Unless another procedure is set forth in this chapter, any decision by the City Engineer or City Manager pursuant to this chapter may be appealed to the City Council by submitting to the City Recorder, within 15 days after notice of the decision, a written statement setting forth the bases for appeal of the decision. The City Council's decision shall be subject to judicial review under the writ of review process.

## **TERMINATION/CURES**

### **5.14.50015.06.310 Revocation Or Termination Of A Franchise Or Authority To Use Rights-of-Way.**

The City Council may terminate a franchise or revoke other authority to use the rights-of-way for any of the following reasons:

1. Violation of this ~~telecommunications~~ordinancechapter.

2. Violation of a franchise agreement.

3. Misrepresentation in a franchise application, including a renewal application.

4. Abandonment of facilities without approval to abandon in place.

5. Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs.



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6. Failure to restore ~~rights-of-way~~rights-of-way after construction as required by this chapter or chapter 15.04.

7. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way.

### ~~5.14.510~~5.06.320 Standards For Revocation Or Termination.

In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

1. The egregiousness of the misconduct;
2. The harm that resulted;
3. Whether the violation was intentional;
4. The ~~franchisee's~~utility operator's history of compliance;
5. The ~~franchisee's~~utility operator's cooperation in discovering, admitting and/or curing the violation.

### ~~5.14.520~~5.06.330 Notice And Cure.

The City shall give ~~franchisee~~the utility operator written notice of any apparent violations before terminating a franchise or revoking authority to use the rights-of-way. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the ~~franchisee~~utility operator to demonstrate that the ~~franchisee~~utility operator has remained in compliance, that the ~~franchisee~~utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the ~~franchisee~~utility operator is in

the process of curing a violation or noncompliance, the utility operator franchisee must demonstrate that it acted promptly and continues to actively work on compliance. If the ~~utility operator franchisee~~utility operator franchisee does not respond or if the City Manager determines that the utility operator franchisee's response is inadequate, the City Manager shall refer the matter to the City Council, which shall provide a duly noticed public hearing and determine whether the franchise or other authority to use the rights-of-way shall be terminated or revoked.

~~6. Failure to restore rights of way after construction.~~

~~7. Failure to comply with technical, safety and engineering standards.~~

### ~~5.14.530~~5.06.340 Penalties.

Failure to comply with a provision of this Ordinance ~~chapter~~ shall be a Class 1 civil infraction.

### ~~5.14.540~~5.06.350 Other Remedies.

Nothing in this Chapter ~~chapter~~ shall be construed as limiting any judicial or other remedies the City may have for enforcement of this Ordinance~~chapter~~.

## SEVERABILITY & APPLICATION TO EXISTING AGREEMENTS

### ~~5.14.600~~5.06.360 Severability And Preemption.

1. The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the

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extent possible, to cover only matters not preempted by federal or state law.

2. If any provision of this Ordinance chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Ordinance chapter shall not be affected and all remaining portions shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state law, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded or amended to end the preemption, the preempted provision shall return to full force and effect without further action by the City.

3. The provisions of this chapter shall not be applied or construed to unlawfully abridge contractual or property rights of a utility operator to occupy private property or the area of a utility easement.

### **5.14.61015.06.370 Application To Existing Agreements.**

This Chapter shall be applied to all persons and activities, including existing franchisees, except that it shall not affect contract rights of existing franchisees. This Chapter shall fully apply to existing franchisees on termination of existing franchises. (Ord. 00-35) ■

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## Chapter 15.04 WORK IN RIGHT-OF-WAY

### Sections:

- 15.04.010 Definitions.  
~~15.04.020~~15.04.030 Permit-- Required.  
~~15.04.030~~ Permit Application.  
~~15.04.040~~ Permit Conditions.  
~~15.04.050~~ Security.  
~~15.04.060~~ Conduct of Work.  
~~15.04.070~~ Adherence To And Exhibition Of Permits.  
~~15.04.080~~15.10.020 Driveway Approaches And Curb Cuts.  
~~15.04.090~~15.10.030 Areas Of Limited Street Improvements.  
~~15.04.100~~15.10.040 Abandoned Driveway Approaches  
~~15.04.110~~15.10.050 Sufficient Parking Required.  
~~15.04.110~~ As-Build Drawings.  
~~15.04.120~~15.04.150 Unusual Conditions.  
~~15.04.130~~15.04.020 Jurisdiction  
~~15.04.140~~15.04.170 Inspection And Acceptance.  
~~15.04.150~~15.04.180 Barricades And Safety Measures.  
~~15.04.160~~15.04.190 Liability for Accidents.  
~~15.04.170~~15.04.160 Repairs.  
~~15.04.180~~15.04.200 Option To City To Replace Pavement.  
~~15.04.190~~ Applicability To City Work.  
~~15.04.200~~15.04.210 Violation--Penalty.

### 15.04.010 Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. Emergency. As used in this chapter, "emergency" means a circumstance in which

immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.  
Apron. As used in this chapter, "apron" means that portion of the driveway approach extending from the gutter flow line to the property line.

2. Curb return. As used in this chapter, "curb return" means the curved portions of a curb in the end slopes of a driveway approach.

3. Driveway. As used in this chapter, "driveway" means an area designated for vehicular use, other than a designated parking area, not dedicated or set aside for public use.

4. Driveway approach. As used in this chapter, "driveway approach" means an area, construction or improvement between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to a definite area, a driveway, or a door at least seven feet wide, intended and used for the ingress and egress of vehicles. The component parts of the driveway approach are termed the apron, the end slopes or the curb return.

5. End slopes. As used in this chapter, "end slopes" means those portions of the driveway approach which provide a transition from the normal curb and sidewalk sloping surface or by means of a curb return together with the area between the projected tangents of the curb return.

62. Person. As used in this chapter, "Personperson" means every natural person, firm, co-partnership, association, public or private corporation or entity, or district.

3. Right-of-way. As used in this chapter, "right-of-way" includes City streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the City. "Right-of-way" also includes public utility

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easements to the extent that the easement allows use by the permittee planning to use or using the public utility easement. "Right-of-way" includes the subsurface under and airspace over these areas. "Right-of-way" does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.

74. Sidewalk. As used in this chapter, "Sidewalksidewalk" means an area specifically delineated and constructed for pedestrian use located behind a curb but within public-the rights of wayrights-of-way or within an easement specifically established for that purpose.

85. Street or Alley. As used in this chapter, "Streetsstreet" or "alley" means every way or place open as a matter of right to the use of the public for vehicular or pedestrian traffic between right of wayright-of-way lines.

96. Tunnel. As used in this chapter, "Tunneltunnel" means an excavation requiring the removal of dirt or like material and does not include driving or forcing of pipe through the ground. (Ord. 74-14 § 1, 1974).

### 15.04.02015.04.030 Permit--Required.

1. It is unlawful for any person to cut upon or within, break, dig up, damage in any manner, undermine or tunnel under any public street or public alley for the purposes of doing work in a right-of-wayright-of-way or in a sanitary sewer, storm sewer or water easement as described in this chapter, without first complying with the provisions of this chapter in regard to the obtaining of permits, depositing of securities and the making of applications to the City. Application for permits shall be in the form prescribed by the City. Permits shall be issued ~~on an annual basis or for a limited time~~ and shall specify the extent of the authority granted by the

~~permit. Permits shall be issued on an annual basis only if the proposed work is subject to franchise agreement with the City.~~

2. No permit shall be issued to place or maintain a utility system in any portion of the right-of-way unless the applicant has complied with the provisions of chapter 15.06 of the Code.

3. Any person who cuts upon or within, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved public street or public alley for purposes other than those described in this chapter, must obtain an encroachment permit pursuant to Chapter chapter 15.16 of this Code. (Ord. 02-22, Ord. 99-31, Ord. 74-14 § 2, 1974).

### 15.04.030 Permit Application.

~~1. At the time of application for permit for a limited time and for a specific cut or break in a street or alley, the applicant shall specify his name, telephone number, and address, the date of application, the name of the street or alley to be cut or tunneled under; the nature of the street surface or of pavement involved; the purpose of the work; the size, location, and nature of the cut or excavation; the number of days required to complete the work; and shall execute an agreement to deposit such securities as required by the City, to comply with the specifications of the City pertaining to the conduct of the work, to save the City and its employees harmless against any injury or damage which may result from the actions of the applicant, and to notify the City Engineer's office at least twenty four hours before beginning the work. Application for each permit to be issued for a limited time and for a specific cut or break in the street or alley shall be accompanied by a fee set by the City Council according to Chapter 3.32 of this code.~~

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~~2. The application for an annual permit shall be in form as prescribed by the City and shall specify the name and address of the applicant, as required by the City, to comply with the provisions of this chapter, and an agreement to save the City and its employees harmless against any injury or damage as a result of the actions of the applicant (Ord. 02-22, Ord. 84-54 §1, 1984; Ord. 81-93 §1, 1981; Ord. 74-14 §3, 1974).~~

### 15.04.040 — Permit — Conditions.

~~All work in streets or other public places shall be done in the location approved by the Engineering Department and in accordance with plans and specifications prepared or approved by the department. Such permit may include conditions binding upon the permittee. Such conditions may include prior filing of a performance bond and/or a maintenance bond and may include such other requirements as the Engineering Department finds appropriate in the public interest. All work done shall be subject to the rejection or correction requirements of the Engineering Department and subject to its final approval. (Ord. 02-22, Ord. 74-14 §4, 1974).~~

### 15.04.050 — Security.

~~Before the issuance of any permit, the Engineering Department shall require the applicant or his contractor to file with the City, as security, either:~~

~~1. In the event an annual permit is requested, a surety bond in the amount of five thousand dollars, unless the applicant is already bound by the provisions of a franchise agreement.~~

~~2. In the event of an application for a permit for one particular cut or break in an alley or street, a surety bond in an amount equal to the estimated cost of the work to be performed.~~

~~3. The cost upon which the amount of the bond or security shall be based shall be the cost of the work to be performed within the public right-of-way, and not the cost of work to be performed outside of such right-of-way.~~

~~4. Security may be held on deposit by the City for a period of one year. The security agreement shall provide that the applicant or his contractor will, immediately upon completion of the work, be obligated to keep the work in a state of good repair at his own expense, and that he shall continue to do so until released from the maintenance obligation. In the event the applicant or his contractor fails to carry out all provisions of the permit and the maintenance requirement, and the City has unreimbursed costs or expenses resulting from such failure, the City may call upon the security agreement or deposit for reimbursement.~~

~~5. In lieu of a surety bond, the applicant or his contractor may file as a security cash, certified check or money order. The City shall hold such security subject to the conditions set forth above.~~

~~6. In the case of unimproved streets, no security shall be required unless, in the opinion of the City, such security is necessary for the protection of the public interest.~~

~~7. The requirements of this section may be waived if the applicant is a municipal corporation and it provides the City with written assurances including, but not limited to, the following:~~

~~a. The applicant agrees to maintain in full force and effect all performance and security bonds assuring performance of contractors for the benefit of the applicant while the work is being performed under the permit for which application is made;~~

~~b. In the event any or all of the work is not completed in accordance with the terms of~~

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~~the permit, the applicant will undertake to complete all work and obligations to be performed for the benefit of the City.~~

~~8. The City Engineer shall determine the adequacy of, and consent in writing to, the alternative assurances provided for in subsection 15.04.050.7 of this section prior to issuance of the permit. (Ord. 02-22, Ord. 82-28 §1, 1982; Ord. 76-11 §1, 1976; Ord. 74-14 §6, 1974).~~

### **15.04.060 — Conduct of Work.**

~~All work under such permits shall be done in conformity with the provisions of this chapter, the terms of the application and permits and in the manner approved by the Engineering Department. Upon completion of the excavation, cut or tunnel, all surplus earth, rubbish or other materials shall be removed immediately and the street surface or pavement shall be replaced in as good as or in better condition than it was before. (Ord. 02-22, Ord. 74-14 §6, 1974).~~

### **15.04.070 — Adherence To And Exhibition Of Permits.**

~~No work shall be undertaken other than that specified in the application and permit for a particular cut or excavation. Upon demand of a City representative or any police officer, the permit shall be produced at the place where the work is in progress or, in the case of an annual permit, shall be on display at the place of business of the person within the City; or such work shall be stopped until the permit is produced and/or authenticated. (Ord. 74-14 §7, 1974).~~

### **DRIVEWAY APPROACHES AND CURB CUTS**

#### **15.04.08015.10.020 Driveway Approaches and Curb Cuts.**

1. The permit provided in this chapter 15.05 authorizes relocation of any municipal facility, including any within the limits of a curb return which may be encroached upon or allowed, providing that the applicant first notifies the appropriate authority, obtains the appropriate authorization and bears the cost of the relocation of the municipal facility.

2. Except for shared driveways, no driveway approach or access shall be less than six feet from the side property line projected, except in cul-de-sacs, without written permission of the City Engineer. End slopes shall not be considered part of the driveway approach or access.

3. No portion of any driveway approach, including the end slopes, shall be located closer than thirty feet to an intersecting street right-of-way line.

4. Commercial or service drives shall not be more than forty feet in width and if located on the same lot frontage shall be separated by a minimum length of curb of thirty feet.

5. Each residential driveway shall not be more than thirty feet in width including end slopes, and if more than one driveway is to be constructed to serve the same lot, the frontage spacing between such driveways shall be not less than thirty feet measured along the curb line.

6. Joint access driveways shall conform to the appropriate width standard for commercial or residential type usage. (Ord. 02-22, Ord. 74-14 §8, 1974).

### **15.04.09015.10.030 Areas of Limited Street Improvements.**

1. Where standard gutter and curbs have been installed but where concrete sidewalks have not been installed, the applicant shall be required to construct the driveway approach from curb line

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to the applicant's premises. The cost shall be borne by the applicant.

2. Where standard gutter and curbs have not been installed, the driveway approach may be constructed of the same material used for surfacing the driveway. The applicant shall improve that portion between the property line and existing pavement in such a manner as to not impede surface drainage along the street. The cost of that portion of the improvement, between the property line and existing pavement, shall be borne by the applicant. (Ord. 74-14 §9, 1974).

### **15.04.10015.10.040 Abandoned Driveway Approaches.**

In the event a person makes an application to relocate a driveway approach and abandons an existing driveway approach, the applicant shall remove the existing driveway and replace the curb to a standard curb section at his own expense. (Ord. 74-14 §10, 1974).

### **15.04.11015.10.050 Sufficient Parking Required.**

No permit for the construction of new driveway approaches shall be issued unless the property served has the minimum parking required by the Community Development Code. (Ord. 02-22, Ord. 74-14 §11, 1974).

### **15.04.110 As Built Drawings.**

Upon request by the City, a permittee shall provide City with two complete sets of engineered plans in a form acceptable to the City showing the location of the facilities the permittee installed or constructed within the rights-of-way pursuant to the permit.

### **15.04.12015.04.150 Unusual Conditions.**

The City Engineer may grant the permit even if all the standards of this chapter are not met if the City Engineer determines that the following conditions are present:

1. There are peculiar physical conditions not ordinarily existing in similar districts in the City or the nature of the business or operation makes compliance with all standards impossible or impractical;

2. The public interest, particularly safety, health, and general welfare is not adversely affected;

3. The granting of the permit will not adversely affect the rights of adjacent property owners or residents; and

4. The application of the standards of this chapter would work unnecessary hardship upon the applicant, property owner, tenants, or residents. (Ord. 02-22, Ord. 74-14 §12, 1974).

### **15.04.13015.04.020 Jurisdiction.**

The requirements of this chapter shall apply to all ~~public rights~~ ~~rights-of-way~~ under the jurisdiction of the City of Tigard, dedicated by plat or deed, created by user, or the use thereof controlled by the City pursuant to agreements with Washington County or the Oregon Department of Transportation.

### **15.04.14015.04.170 Inspection and Acceptance.**

The permittee must ~~apply to~~ notify the City Engineering Department of the City or designee upon completion for inspection of the work to determine compliance with the requirements of this chapter, prior to final acceptance of the work. The permittee shall not be relieved of obligations under any ~~performance or cash bond~~ security posted ~~given~~ pursuant to the provisions hereof

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until the work is in accordance with the terms of the permit and has been accepted by the ~~department~~City. Acceptance by the City does not relieve the permittee of its obligation to maintain, repair, or reconstruct the site of the excavation so as to maintain a condition acceptable to the City Engineer until the right-of-way is reconstructed, repaved, or resurfaced by the City. ~~The permittee shall further remain obligated through a time period which may be required by the City, via maintenance bond, but not exceeding one year from the date of acceptance of the work.~~ (Ord. 02-22, Ord. 74-14 §14, 1974).

### ~~15.04.150~~15.04.180 Barricades And Safety Measures.

Whenever any person, under authority of this chapter or otherwise, places any obstruction in a ~~street or alley~~right-of-way or makes any excavation therein for any purpose whatsoever, it shall be the duty of such person ~~or corporation~~ to keep the obstructions or excavation properly safeguarded by substantial barricades and display lighted red lanterns or other lights or flares from dusk until daylight in conformity with such regulations as may be specified by the City Engineer. Whenever, in the opinion of the ~~City Engineering Department~~, the public safety is endangered by such cuts or excavations as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning and all traffic is properly routed around such barricades, ~~the person to whom the permit for work has been granted~~permittee shall be responsible for furnishing ~~a night watchman~~such supervision for that purpose. (Ord. 02-22, Ord. 74-14 §15, 1974).

### ~~15.04.160~~15.04.190 Liability for Accidents.

Every person ~~or corporation~~ having occasion to place any obstruction in ~~any street or alley~~the right-of-way or to make any excavation therein under the provisions of this chapter shall be

responsible to anyone for any injury by reason of the presence of such obstructions or excavation on the public highways when the obstruction or excavation is the whole proximate cause of the injury and shall also be liable to the City, in the event that the City is held responsible for any action or claims or otherwise arising out of the presence of the obstruction or excavation ~~on in the public highway~~right-of-way. (Ord. 74-14 §16, 1974).

### ~~15.04.170~~15.04.160 Repairs.

~~All persons to whom permits are granted under this chapter shall be personally responsible for the maintenance and repair of the street surface of pavement cut, dug up, damaged, tunneled under, undermined, under the provisions of the permit, in~~ The permittee shall, at its own expense, repair and restore the area in which the work was performed to as good or better condition than before such work was undertaken at their own expense, and for such a period of time as required by the Engineering Department, but not to exceed one year. (Ord. 02-22, Ord. 74-14 §17, 1974).

### ~~15.04.180~~15.04.200 Option To City To Replace Pavement.

~~Whenever, in the opinion of the City Engineer, it would be to the best interest of the City for the City itself~~ The permittee shall to replace or repair the street surface or pavement cut, damaged, tunneled under or undermined under the provisions of this chapter. , such work shall be If the permittee fails to restore the street surface or pavement as required by this chapter, the City may replace or repair the street surface or pavement and either charged to the person to whom the permit for the cut or excavation has been granted the permittee or deducted the cost from the security deposited by him the permittee with the City. (Ord. 74-14 §18, 1974).



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### **15.04.190 ~~Applicability to City Work.~~**

~~The provisions of this chapter shall not be deemed to apply to construction or maintenance within streets or ally rights of way by the City, by its employees, when conducting City work, or by persons operating under contract with the City; contractor's performance and maintenance responsibilities are not, though, relieved. (Ord. 74-14 §19, 1974).~~

### **15.04.20015.04.210 Violation--Penalties.**

~~A violation of this chapter is a~~Failure to comply with a provision of this chapter shall be a Class 1 Civil Infraction. (Ord. 02-22, Ord. 74-14 §21, 1974).■

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## **Chapter 15.10 DRIVEWAY APPROACHES AND CURB CUTS**

### **Sections:**

#### **15.10.010 Definitions.**

#### **15.10.020 Driveway Approaches and Curb Cuts.**

#### **15.10.030 Areas of Limited Street Improvement.**

#### **15.10.040 Abandoned Driveway Approaches.**

#### **15.10.050 Sufficient Parking Required.**

#### **15.10.060 Penalties.**

#### **15.10.010 Definitions.**

1. Apron. As used in this chapter, "apron" means that portion of the driveway approach extending from the gutter flow line to the property line.

2. Curb return. As used in this chapter, "curb return" means the curved-portion of a curb in the end slopes of a driveway approach.

3. Driveway. As used in this chapter, "driveway" means an area designated for vehicular use, other than a designated parking area, not dedicated or set aside for public use.

4. Driveway approach. As used in this chapter, "driveway approach" means an area, construction or improvement between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to a definite area, a driveway, or a door at least seven feet wide, intended and used for the ingress and egress of vehicles. The component parts of the driveway approach are termed the apron, the end slopes or the curb return.

5. End slopes. As used in this chapter, "end slopes" means those portions of the driveway approach which provide a transition from the normal curb and sidewalk sloping surface or by means of a curb return together with the area between the projected tangents of the curb return.

6. Person. As used in this chapter, "person" means every natural person, firm, co-partnership, association, public or private corporation or entity, or district.

7. Right-of-way. As used in this chapter, "right-of-way" includes City streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the City.

8. Sidewalk. As used in this chapter, "sidewalk" means an area specifically delineated and constructed for pedestrian use located behind a curb but within the rights-of-way or within an easement specifically established for that purpose.

9. Street or Alley. As used in this chapter, "street" or "alley" means every way or place open as a matter of right to the use of the public for vehicular or pedestrian traffic between right-of-way lines.

#### **15.10.060 Penalties.**

Failure to comply with a provision of this chapter shall be a Class 1 civil infraction.■